

**Master Contract Number T03-MST-008**

**for**

**Small Business Phone Systems**

**between**

***The Department of Information Services***

**and**

***Best Tel, LLC.***

**Effective Date: September 2, 2003**

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**MASTER CONTRACT NUMBER T03-MST-008**

**for**

**Small Business Phone Systems**

**PARTIES**

This Master Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Information Services, an agency of Washington State government ("DIS"), located at 512 12<sup>th</sup> Avenue SE, Olympia, WA 98504-2445 and Best Tel, LLC, a limited liability corporation licensed to conduct business in the state of Washington ("Vendor"), located at 1018 Industry Dr., Tukwila, WA 98188 for the purpose of providing the NEC America I-Series Small Business Phone System.

**RECITALS**

The state of Washington, acting by and through DIS, issued a Request for Quotation (RFQ) dated October 21, 2002 (Exhibit A) for the purpose of establishing Master Contracts for Small Business Phone Systems in accordance with its authority under chapter 43.105 RCW.

Best Tel, LLC submitted a timely Response to DIS' RFQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQ and has identified Best Tel, LLC as an apparently successful Vendor.

DIS has determined that entering into a Contract with Best Tel, LLC will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to Best Tel, LLC this Master Contract, the terms and conditions of which shall govern Vendor's furnishing to Purchasers the Small Business Phone Systems. This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Products or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

**"Acceptance"** shall mean that the System has passed its Acceptance Testing and shall be formalized in a written notice from Purchaser to Vendor; or, if there is no Acceptance Testing, Acceptance shall occur when the Products are delivered.

**"Acceptance Date"** for Vendor-installed Systems shall mean the date upon which Purchaser Accepts the Systems as provided in the section titled **Standard of Performance and**

**Acceptance**; and for Purchaser-installed Equipment, shall mean the date of delivery of the Products, or, if delivery of partial Orders has been agreed to between Purchaser and Vendor, the last date of delivery of the components of an Order.

**"Acceptance Testing"** shall mean the process for ascertaining that the System meets the standards set forth in the section titled **Standard of Performance and Acceptance**, prior to Acceptance by Purchaser.

**"Business Days and Hours"** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**"Confidential Information"** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

**"Delivery Date"** shall mean the date by which the Products ordered hereunder must be delivered.

**"DIS"** shall mean the Washington State Department of Information Services.

**"DIS Contract Administrator"** shall mean the TSD Contract Administrator, designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

**"Effective Date"** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**"Effectiveness Level"** shall mean the percentage of time in a month that a Product is functioning properly in accordance with its Specifications.

**"Equipment"** shall mean the Small Business Phone Systems as set forth in this Contract.

**"Exhibit A"** shall mean the RFQ.

**"Exhibit B"** shall mean Best Tel, LLC's Response.

**"Help Desk"** shall mean a service provided by Vendor for the support of Vendor's Products. Purchaser shall report warranty or maintenance problems to Vendor's Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.

**"Installation Date"** shall mean the date by which all Equipment ordered hereunder shall be in place, in good working order and ready for Acceptance Testing.

**"Order" or "Order Document"** shall mean any official document and attachments thereto specifying the Products and/or Services to be purchased from Vendor under this Contract.

**"Manufacturer"** shall mean NEC America, Inc.

**"Master Contract" or "Contract"** shall mean this document, all schedules and exhibits, all amendments hereto and all Orders hereunder.

**"Price"** shall mean charges, costs, rates, and/or fees charged for the Products and Services under this Contract and shall be paid in United States dollars.

**"Product(s)"** shall mean any Vendor-supplied Equipment, Software and documentation.

**"Proprietary Information"** shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**"Purchaser"** shall mean DIS and those government or nonprofit entities that have entered into an Interlocal or Customer Service Agreement with DIS.

**"RCW"** shall mean the Revised Code of Washington.

**"RFQ"** shall mean the Request for Quotation used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**"Response"** shall mean Vendor's Response to the RFQ for Small Business Phone Systems, Exhibit B hereto.

**"Schedule A: *Authorized Product and Price List*"** shall mean the attachment to this Contract that identifies the authorized Products and Services and Prices available under this Contract.

**"Schedule B *Escalation Procedures*"** shall mean the attachment to this Contract that identifies Vendor's escalation procedures.

**"Schedule C: *Maintenance Plan*"** shall mean the attachment to this Contract that describes Vendor's maintenance plan.

**"Services"** shall mean those services provided under this Contract and related to the Products being acquired, that are appropriate to the scope of this Contract and includes such things as installation services, maintenance, training, move/add/change, etc.

**"Small Business Phone Systems"** shall mean an electronic key telephone system (EKTS) or a Private Branch Exchange (PBX) that serves 100 or fewer telephone stations and with a five (5) year total cost to Purchaser, including maintenance, of under \$75,000.

**"Software"** shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Vendor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**"Specifications"** shall mean the technical and other specifications set forth in the RFQ, Exhibit A, any additional specifications set forth in Vendor's Response, Exhibit B, and the specifications set forth in Vendor's Product documentation, whether or not Vendor produces such documentation before or after this Contract's Effective Date.

**"Standard of Performance"** shall mean the criteria that must be met before Equipment Acceptance, as set forth in the section titled **Standard of Performance and Acceptance**. The Standard of Performance also applies to all additional, replacement or substitute Equipment and Equipment that is modified by or with the written approval of Vendor after having been accepted.

**"State"** shall mean the state of Washington.

**"Subcontractor"** shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Contract under a separate contract with Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

**"System"** shall mean Small Business Phone System.

**"TSD"** shall mean the DIS Telecommunication Services Division.

**"Vendor"** shall mean Best Tel, LLC, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

**"Vendor Account Manager"** shall mean a representative of Vendor who is assigned as the primary contact person whom the DIS Contract Administrator shall work with for the duration of this Contract, unless replaced, with advance approval of the DIS Contract Administrator, and as further defined in the section titled **Vendor Account Manager**.

**"Vendor Project Manager"** shall mean a representative of Vendor who is assigned to each Purchaser installation project as the coordinator of activities and the primary point of contact, as further defined in the section titled **Vendor Project Manager**.

**"Warranty Period"** shall mean the period of time as set forth in the section titled **Equipment Warranty** wherein Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications.

## **Contract Term**

### **2. Term**

- 2.1. This Master Contract's initial term shall be three (3) years, commencing upon the Effective Date.
- 2.2. This Master Contract's term may be extended by three (3) additional one (1) year terms, provided that the extensions shall be at DIS' option and shall be effected by DIS giving written notice of its intent to extend this Contract to Vendor not less than thirty (30) calendar days prior to the Contract term's expiration and Vendor accepting such extension prior to the Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

### **3. Limits of Master Contract Use**

Each purchase under this Master Contract will not exceed a five (5) year total cost of \$75,000 and will serve 100 or fewer telephone stations.

### **4. Survivorship**

All purchase transactions executed pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Vendor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; License Grant; Software Ownership; Date Warranty; No Surreptitious Code Warranty; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and**



**Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Master Contract.

## **Pricing, Invoice and Payment**

### **5. Pricing**

- 5.1. Vendor agrees to provide the Products at the mark up rate of nineteen percent (19%) over the NEC America I Series Dealers List Price and the Services at the rates set forth in Schedule A. No other Prices shall be charged by Vendor for implementation of Vendor's Response. The Vendor may, however, offer better pricing at its sole discretion.
- 5.2. Mark up rates and Prices may not be increased during the term of the Contract.
- 5.3. If Vendor reduces its mark up rates or Prices for any of the Products or Services during the term of this Contract, Purchaser shall have the immediate benefit of lower mark up rate or Prices for new purchases. Vendor shall send notice to the DIS Contract Administrator with the increased discount or reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 5.4. Vendor agrees that all the discounts, Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Vendor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Vendor shall be obligated to provide the same to the State for subsequent purchases.
- 5.5. Vendor shall be reimbursed for any expenses related to travel, i.e., per diem, meals, lodging, etc. according to the rates and policies established by the state of Washington Office of Financial Management (<http://www.ofm.wa.gov/policy/10.htm>). Vendor may bill for travel (round trip) for actual time spent.
- 5.6. Throughout the term of this Contract, Vendor shall ensure that the I-Series Dealer Price List is available to DIS directly from the Manufacturer on a monthly basis.

### **6. Advance Payment Prohibited**

No advance payment shall be made for the Products and Services furnished by Vendor pursuant to this Contract.

### **7. Taxes**

- 7.1. Purchaser will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 7.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## **8. Invoice and Payment**

- 8.1. Vendor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser. Invoices shall provide and itemize, as applicable:
- a) Master Contract number T03-MST-008;
  - b) Purchaser's Order Number;
  - c) Vendor name, address, phone number, and Federal Tax Identification Number;
  - d) Description of Products, including quantity ordered, model and serial numbers;
  - e) Description of Services provided;
  - f) Date(s) of delivery of Products or Services and/or date(s) of Product installation and set up;
  - g) Price for each item;
  - h) Total purchase Price;
  - i) Applicable taxes;
  - j) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);
  - k) Other applicable charges;
  - l) Total invoice amount; and
  - m) Payment terms including any available prompt payment discounts.
- 8.2. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Products or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 8.3. Purchaser shall pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day.
- 8.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 8.5. The DIS Contract number T03-MST-008 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 8.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 8.7. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or receipt of Vendor's properly prepared invoice, whichever is later.

## **9. Overpayments to Vendor**

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

## **Vendor's Responsibilities**

### **10. In-State Presence and Statewide Coverage**

Vendor shall have a place of business staffed by Vendor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Orders and communications and all sales and Services provided to Purchasers will be through this in-state location. Vendor's Products and Services shall be available under this Master Contract to Purchasers located throughout the state of Washington.

### **11. NEC America I-Series Authorized Distributor**

During the term of this Master Contract and any renewals, Vendor shall maintain its status as an authorized distributor of NEC America I-Series brand Small Business Phone Systems that are the subject of this Master Contract.

### **12. RFQ Mandatory Requirements**

The RFQ mandatory requirements are essential substantive terms of this Master Contract. Products and Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQ.

### **13. Vendor Website**

Vendor shall establish and maintain an Internet website throughout the term of this Master Contract that will provide Purchasers with Product, Service, Master Contract Prices and ordering information. The website will be accessible from the Washington State Technology Mall, and will only allow exiting that returns through the Technology Mall.

### **14. Title to Equipment**

Upon successful completion of Acceptance Testing and receipt of Purchaser's letter of Acceptance, Vendor shall convey to Purchaser good title to the Products, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If Purchaser subsequently transfers title to the Equipment to another entity, Purchaser shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchaser or Purchaser's transferee.

### **15. Wiring/Cabling Restrictions**

Vendor shall not sell cable or wiring components and shall not install wiring or cable under this Master Contract except in direct support of a Small Business Phone System purchased under this Master Contract.

## **16. Wiring/Cabling Support Services Requirements**

- 16.1. If Purchaser requests that Vendor install the wiring/cabling during the Small Business Phone System installation, Vendor shall provide Purchaser a firm quote for this service prior to installation. Vendor shall comply with the requirements of this section in all wiring/cabling work under this Master Contract.
- 16.2. All new cables, whether using pedestals, existing conduit, raceways or utility tunnels, will be installed per city, county, and state codes and building and wiring standards, as specified in Information Services Board's Computing and Telecommunications Standards-Building Wiring dated December 2000. (Reference Statewide IT Policies at <http://www.wa.gov/dis/isb/policy.htm> )
- 16.3. Vendor will keep wiring and cable records during installation that correlate station directory number, distribution cable number and station location, serving closet and termination rack location. A clean, legible copy of these records will be given to Purchaser upon project completion.
- 16.4. Vendor will provide Purchaser a complete set of as-built drawings following a project completion that show all distribution cable runs, numbers of pairs, all distribution frames and the location of all instruments and outlets labeled to correlate to drawings and the cable record.
- 16.5. Vendor shall leave no exposed cable or wiring. All wiring and cable will be grouped by cable ties where various cables or wires meet and run parallel. Vendor will label all installed cables.
- 16.6. Unless otherwise specified by Purchaser, telephone cables will run to central locations designated by Purchaser as Intermediate Distribution Frames (IDFs) or Main Distribution Frames (MDFs) and will be identified numerically at both ends.
- 16.7. All IDF/MDFs will be coded and labeled according to standard telco coding (binder group labeling).
- 16.8. Telephone cable runs will *not* be spliced or taped.
- 16.9. All between-floor feeder and distribution cabling will be air core pic cable, shielded and bonded. Vendor will be responsible for sleeving and packing all cable openings between floors.
- 16.10. Vendor will connect all floors to their respective IDFs and terminate them at the MDF. Adjacent buildings, within the scope of the Order, will terminate at the MDF.
- 16.11. Vendor will terminate all pairs of inside wire on jacks and station blocks.
- 16.12. The reuse of any existing cable will require prior Purchaser approval and shall detail the following information: cable sizes, location of cable reused, and total amount reused. Vendor will correct existing cable discrepancies when reusing existing cable. Vendor may recommend the replacement of existing cable, if in the Vendor's opinion, it does not meet current industry standards.
- 16.13. Each new terminal location will be supplied with a jack. Each jack will be labeled with the corresponding cable number.
- 16.14. Cable Acceptance: The following will be evaluated to determine cable/wiring acceptance:

- a) Cable transmission requirements;
- b) Cable routes;
- c) Cable neatness;
- d) Cable functionality;
- e) Industry and state standards;
- f) Bonding;
- g) Splicing;
- h) Terminations; and
- i) Cable drawings/schematics.

## **17. General Product Requirements/Compatibility/Specifications/Configurations**

- 17.1. Vendor represents and warrants that all Products provided under this Master Contract:
  - a) Are TDM circuit switched;
  - b) Will conform to each item's detailed Specifications in all respects;
  - c) Are of new manufacture and in current standard production;
  - d) Will be operable and installed in accordance with Manufacturer's specifications when Vendor provides installation;
  - e) Provide an integrated voice processing function with an Octel voice mail system.
- 17.2. Vendor shall be solely responsible for resolving compatibility issues associated with interfacing Products purchased under this Contract with public or private networks or transmission facilities.
- 17.3. Vendor will modify Purchaser's existing equipment, as needed, to ensure compatibility with all new Equipment, e.g., line sensors, lead controls. Vendor will also advise Purchaser if any existing equipment, ancillary equipment, or other affected components will not be compatible with the new Equipment.
- 17.4. For the purpose of delivery and performance under this Contract, Products purchased hereunder shall be grouped together in one or more Equipment, firmware, and/or software configurations as set forth in Vendor's Response. Any such configuration shall be deemed incomplete and undelivered if any item within that configuration has not been delivered, or if delivered, not installed or operational in accordance with this Contract's **Delivery and Installation and Set-Up** sections.
- 17.5. Purchaser shall have the right to connect the Equipment purchased hereunder to any equipment manufactured or supplied by others including other computers, peripheral equipment, terminal devices, communications equipment, software and the like that interface with the Equipment purchased hereunder.
- 17.6. If requested by Purchaser, Vendor agrees to identify, on all items of Equipment supplied under this Contract, all appropriate test points for connecting commercially available equipment monitors designed to measure system capacity, performance, or activity.

## **18. Shipping and Risk of Loss**

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards

of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After Acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Vendor's fault or negligence.

## **19. Delivery**

- 19.1. All Small Business Phone Systems purchased under this Contract shall be completely installed and ready to begin Acceptance Testing within forty-five (45) calendar days after Vendor's receipt of an Order. Extensions will be granted at the sole option of the Purchaser. Time is of the essence with respect to delivery and Vendor may be subject to termination of an Order or of this Contract and/or other damages available under law for failure to deliver on time.
- 19.2. All deliveries made pursuant to this Contract must be complete. Unless Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 19.3. The Vendor assumes all responsibility for the delivery, installation and maintenance of all Vendor-supplied equipment, software and support services proposed. Unless otherwise indicated, all systems will be cut over outside of normal working hours.

## **20. Site Security**

While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

## **21. Installation and Set-up**

- 21.1. When installing a new Small Business Phone System, Vendor will provide, at no additional charge:
  - a) A written installation support plan and schedule addressing staffing, site preparation requirements, resource allocation, testing procedures;
  - b) Site surveys;
  - c) Station reviews to identify user requirements;
  - d) An on-site Manufacturer certified technician during and after the cutover until the System operates properly;
  - e) On-site user training for the Small Business Phone System;
  - f) System administration training; and
  - g) Changes that are requested within five (5) Business Days after cutover to up to fifteen percent (15%) of the features and line assignments.
- 21.2. Vendor personnel shall be NEC America I-Series Manufacturer certified in accordance with NEC America I-Series Manufacturer requirements. Upon request Vendor will furnish a copy of such certification to Purchaser or DIS.

- 21.3. Purchaser shall have access to the work site at all times during installation.
- 21.4. Purchaser shall prepare the environment to house the Equipment based upon written requirements provided by Vendor in its installation plan, as modified in writing and agreed to by the parties. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Vendor's Response. Any requirements for the environment not disclosed in Vendor's installation plan will be completed by Vendor at no additional cost to Purchaser. Purchaser will provide standard commercial power. Vendor shall install an external, NEC America I-Series Manufacturer recommended surge protector between the power source and each major system.
- 21.5. Vendor will acquire any permits, if required, at no additional cost to Purchaser. Vendor shall replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Vendor personnel to their original condition at no additional cost to Purchaser.
- 21.6. At Purchaser's option, all line coordination with the local telephone company, relative to installation of the system, will be the responsibility of the Vendor. All orders for installation, re-termination, or discontinuance of DIS/TSD Centron lines and/or central office services must be processed through DIS/TSD.
- 21.7. Vendor will program Products according to Purchaser's specifications and modify voice terminal faceplates to identify specifically programmed buttons.
- 21.8. Vendor shall install the Equipment, with all features, options, parts and wiring ordered by Purchaser, ready for Acceptance Testing, on or before the Installation Date(s) specified in the Order Document. Failure to meet the Installation Date(s) may subject Vendor to termination of an Order or of this Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser.

## **22. Standard of Performance and Acceptance**

- 22.1. In addition to the Acceptance Testing set forth in this section, Purchaser may conduct terminal testing and other tests of the installed System. Vendor will provide testing equipment required for demonstration of the System's performance.
- 22.2. After installing the Systems, Vendor shall provide Purchaser with documentation of a successful system audit using Vendor's diagnostic routines, as approved by Purchaser, demonstrating that the System meets or exceeds the Specifications. Vendor shall certify to Purchaser in writing that the System is ready for Acceptance Testing. The Acceptance Testing will begin on the day the System is cutover.
- 22.3. Acceptance of a System will be based on the following criteria.
  - a) Meeting or exceed the Standard of Performance defined below;
  - b) All installation, wiring, and cabling requirements identified in Section 15 above have been satisfied;
  - c) Delivery to Purchaser of complete and updated as-built drawings indicating conformance with specifications;
  - d) Conformance of installation and programming requirements as specified by the Purchaser; and
  - e) Completion of all required training of Purchaser staff (see section 33 below).

- 22.4. The Standard of Performance for a System is defined as a 99.5% Effectiveness Level during the Acceptance Testing period set forth below. The voice terminals shall have a 98% trouble-free performance during this period
- 22.5. The Effectiveness Level for a System is the percentage of time in a month that the System is functioning properly in accordance with its Specifications. The Effectiveness Level is determined by dividing the Operational Use Time of the Product by the sum of the Operational Use Time plus the Product Failure downtime, all of which shall be measured in hours and whole minutes. Operational Use Time for a Product is defined as the total time the Product would normally be used. Product Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of a System Failure. System Failure is defined as a malfunction in the Equipment or Software that prevents the accomplishment of the intended function(s) of the System.
- 22.6. Downtime for each incident shall start from the time that Vendor knew or reasonably should have known of the System Failure, or Purchaser makes a bona fide attempt to contact Vendor's designated representative at the prearranged contact point, whichever occurs earlier, until the System is returned to fully operational status in conformance with its Specifications. During periods of System Failure downtime, Purchaser may use operable portions of the System when such action does not interfere with repair of the inoperable portions.
- 22.7. The Acceptance Testing period shall be thirty (30) calendar days, starting from the day of cutover. Purchaser will review all pertinent data and shall maintain appropriate daily records to ascertain whether the Standard of Performance has been met.
- 22.8. In the event the System does not meet the Standard of Performance during the initial period of Acceptance Testing, Purchaser may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met. If after sixty (60) calendar days the System still has not met the Standard of Performance Purchaser may, at its option: (1) declare Vendor to be in breach of this Contract and terminate this Order; or, (2) demand replacement System from Vendor at no additional cost to Purchaser; or, (3) continue the Acceptance Testing for an additional thirty (30) calendar days. Vendor shall pay all costs related to the preparation and shipping for Systems returned pursuant to this section. Purchaser's option to declare Vendor in breach and terminate this Order shall remain in effect until exercised or until such time as Acceptance Testing is successfully completed.
- 22.9. No System shall be accepted and no charges shall be paid until this Standard of Performance is met. The date of Acceptance shall be the first Purchaser Business Day following the successful Acceptance Testing period and shall be formalized in a notice of Acceptance from Purchaser to Vendor.

### **23. Equipment Warranty**

- 23.1. Vendor warrants that the Equipment shall be in good operating condition and shall conform to the Specifications for a period of one (1) year, the Warranty Period, commencing upon the first day after the Acceptance Date. In addition, Best Tel warrants its parts for five years.
- 23.2. During the Warranty Period, Vendor shall adjust, repair, or replace all Equipment that is defective or not performing in conformance with the Specifications. All costs for such



adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, shall be at Vendor's expense. Any defective Equipment shall be repaired or replaced for Purchaser so that it conforms to the Specifications.

- 23.3. Vendor agrees that all warranty service provided hereunder shall be performed by Manufacturer-trained, certified, and authorized technicians. Vendor further agrees to act as the sole point of contact for warranty service. Vendor warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional Equipment warranties.
- 23.4. Vendor shall provide Help Desk Services for reporting warranty issues and for troubleshooting problems.
- 23.5. Vendor shall provide escalation procedures to ensure that the proper level of attention and resources are directed towards resolution of Products and Services problems in a timely manner. The escalation procedures shall indicate the steps to be taken in response to a problem report, the contact information and title of Vendor's employee(s) responding at each level and the elapsed time before the next level of response is invoked. Vendor's escalation procedures are attached as Schedule B.
- 23.6. Non-emergency maintenance/repair response time during warranty will be within eight (8) Business Hours after notification and will be performed during Business Hours. When on-site, Vendor must report to Purchaser's designated coordinator prior to and after each service call.
- 23.7. Emergency on-site maintenance/repair response time during warranty will be within two (2) hours, twenty-four (24) hours per day, seven (7) days per week, including holidays. Time to correct an emergency situation shall not exceed eight (8) hours after notification. Emergency maintenance applies to: (i) Failure of signaling; (ii) Failure of power supply; and (iii) Failure of any terminals deemed critical by Purchaser to the functioning of Purchaser's business functions.
- 23.8. Any work or upgrade that may affect service must be coordinated with Purchaser's coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser's prior written approval.
- 23.9. Purchaser agrees that Vendor will not be liable for any damages caused by Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation.

## **24. Equipment Maintenance**

At the expiration of the Warranty Period set forth in the section titled **Equipment Warranty**, Vendor shall provide maintenance services for the Equipment as described herein, at the Prices set forth on Schedule A.

- 24.1. Vendor shall offer one or more maintenance service plan(s) attached as Schedule C to keep the Equipment in good operating condition or restore it to good working order in accordance with the Specifications or, upon Purchaser's prior written approval, to current standards.

- 24.2. Vendor shall provide contracted maintenance support twenty-four (24) hours per day, Seven (7) days per week, every day of the year including all holidays.
- 24.3. Vendor personnel responding to maintenance calls, repairing or servicing the system shall be NEC America I-Series Manufacturer-certified to work on that model of Small Business Phone Systems.
- 24.4. Vendor warrants service availability during the life of the Product or for seven (7) years from its Acceptance Date, whichever is longer.
- 24.5. Vendor shall maintain a log on Purchaser's premises that details repairs, preventive maintenance and upgrades to the system. The log shall be available for inspection by DIS upon request.
- 24.6. Purchaser shall provide Vendor access to the System to perform maintenance service.
- 24.7. When on-site, Vendor shall report to Purchaser's designated coordinator prior to and after each service call.
- 24.8. Routine maintenance and any maintenance or upgrade that may affect service must be coordinated with Purchaser's coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser's prior written approval.
- 24.9. Preventive Maintenance. Vendor shall specify in writing the number of hours each Equipment item requires per month for preventive maintenance and the frequency and duration of such preventive maintenance. From this Vendor-supplied information Purchaser shall develop and provide to Vendor in writing the schedule within which Vendor shall provide preventive maintenance. This schedule may be modified as agreed in writing. In addition, preventive maintenance may be performed at a time convenient to Purchaser within or contiguous with remedial maintenance.
- 24.10. Upon completion of each maintenance call, Vendor shall furnish a maintenance activity report to Purchaser, which shall include, as a minimum, the following:
  - a) Date and time notified;
  - b) Date and time of arrival;
  - c) Type and serial number(s) of machine(s);
  - d) Time spent for repair;
  - e) Description of malfunction;
  - f) List of parts replaced; and
  - g) Additional charges, if applicable.
- 24.11. There shall be no additional maintenance charges for:
  - a) Replacement parts;
  - b) Preventive maintenance, regardless of when performed;
  - c) Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction;
  - d) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material; or

- e) Remedial maintenance required when the scheduled preventive maintenance preceding the malfunction has not been performed.
- 24.12. Guaranteed two hour response time. For the term of the maintenance service, Vendor shall provide Purchaser with a guaranteed two (2) hour maintenance response time for the Equipment purchased hereunder. Within two (2) hours after notification by Purchaser that Purchaser is experiencing Equipment problems, Vendor's qualified field engineer shall arrive at Purchaser's location to correct such problem or shall connect to the problem system remotely via modem, RAS, network connection. This guaranteed two (2) hour response service shall be available to Purchaser twenty-four hours per day, seven (7) days per week, every day of the year including holidays (24x7x365).
- 24.13. Maintenance Credits For Equipment Malfunction
- a) Vendor shall grant a credit to Purchaser for any Equipment being maintained by Vendor that fails to perform at an Effectiveness Level of 99.5% trouble-free during any month. The Effectiveness Level for an item of Equipment shall be defined and computed in the same manner as provided for in the **Standard of Performance and Acceptance** section of this Contract. (see section 22 above).
  - b) The credit granted by Vendor shall be fifty percent (50%) of the monthly maintenance fee for each percentage point a machine falls below its required effectiveness level. For example if the credit is 50% and the actual effectiveness level for a machine is 88% instead of the required 90%, the maintenance credit would be 100% of the monthly maintenance fee for that month, i.e., 2 percentage points below the requirement so  $2 \times 50\% = 100\%$  credit.
  - c) If the Equipment fails to operate at an Effectiveness Level of 99.5% for two (2) consecutive months, it shall be considered a Failure to Perform.

## 25. Failure to Respond

In cases where Vendor does not respond within the required time, Purchaser shall have the option of acquiring repair from another Manufacturer certified source and Vendor shall be responsible for full reimbursement of costs incurred by Purchaser. Maintenance by another Manufacturer certified source when Vendor has failed to respond will not constitute grounds to void the warranty.

## 26. Service Disruptions

Purchaser may require that work be performed outside of Business Days and Hours. Vendor shall not conduct Product installation, upgrades and system cutovers, maintenance or warranty work that may affect service or disrupt Purchasers' daily operations during Business Hours without the prior written consent of Purchaser.

## 27. Move/Add/Change Services

Vendor will provide Move/Add/Change services on a times and materials basis using the applicable rates quoted in Schedule A *Price List*. Move/Add/Change service will entail any additional work requested by Purchaser after the installation of the System. This work will include, but not be limited to purchase of additional Equipment, programming, wiring, and relocation of existing equipment. Vendor will complete the requests for Move/Add/Change services within one (1) week of such requests. Furthermore, Vendor will provide service on

Move/Add/Change orders within a 72 Business Hours from the time the call came in or pay the Purchaser five hundred dollars (\$500.00) for each late occurrence.

**28. Equipment and Maintenance Documentation**

Vendor shall provide two (2) complete sets of documentation for each Equipment Order, including technical, electrical, maintenance, and installation information and will provide updated documentation for the term of this Contract. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Equipment documentation shall be comprehensive, well-structured, and indexed for easy reference. If Vendor maintains its technical, electrical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Vendor may also provide such information on CD-ROM. Vendor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

**29. System Life**

The Small Business Phone System shall have a minimum of seven (7) years useful life without requiring major modification, i.e. g., additional cabinets or major hardware change out which renders installed Equipment obsolete.

**30. Spare Parts for Equipment**

Vendor shall make available to Purchaser either a depot repair center and/or an availability guarantee of component parts and sub-assemblies necessary for on-going maintenance and operation of the System. Vendor guarantees part availability for a minimum of seven (7) years from the Acceptance Date of a System by Purchaser. In addition, Vendor shall have a complete on-site "crash kit" of spare parts or a permanent maintenance facility with a full parts inventory within a distance that will meet the specified emergency on-site response times.

**31. Vendor Commitments, Warranties and Representations**

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

**32. Compliance with Standards**

Vendor represents that all Equipment, Software, and elements thereof, including but not limited to documentation and source code, shall meet and be maintained by Vendor to conform to Telcordia standards. The absence of specifications will imply that Telcordia standards will prevail, that new materials of first quality will be utilized and that all work will be performed in a workmanlike manner in accordance with industry best practices.

### 33. Training

- 33.1. Vendor shall provide at least four (4) hours on-site training to Purchaser staff. This training will provide hands-on instruction to Purchaser staff regarding how to operate, administer, and support the System in the required fashion.
- 33.2. Training shall be provided using the acquired System and shall be completed prior to Acceptance.
- 33.3. User Guides. Vendor shall provide Purchaser with detailed user guides.
- 33.4. Maintenance/Repair classes. Maintenance and repair classes on the System shall be available to Purchaser employees at Vendor's then-current prices.
- 33.5. System Administration Training. Vendor shall provide Systems administration training for Purchaser staff experienced with Small Business Phone System technology. The training shall be conducted at Purchaser's site and include:
  - a) An overview of the System including feature interactions;
  - b) A detailed review of the System design considerations and station review issues;
  - c) Detailed instruction on voice terminal moves, adds, and changes;
  - d) Detailed instructions on making feature changes;
  - e) Instructions on obtaining and analyzing call traffic and trunk utilization statistics; and
  - f) Detailed instruction on identifying and responding to alarm conditions.
- 33.6. Maintenance/Administration Training. Vendor shall offer training on maintenance and administration terminals to Purchaser staff at least one (1) month prior to cutover.
- 33.7. Training Follow-up. Vendor representatives shall be available to provide support for two full Business Days after System cutover. This support may include, but not be limited to: training, assisting console operators, providing an on-site help desk, answering questions, and providing necessary assistance on System operation. For a phased cutover, this requirement shall be met for a minimum of one Business Day following the cutover of each phase. Purchaser's Project Manager may elect to require additional training coverage by Vendor following each move in.
- 33.8. The starting dates of the training will be as agreed by the parties.
- 33.9. The training fee, whether separately stated under the pricing sections of this Contract or included in the cost of the System, shall cover all costs of training. Purchaser shall not be responsible for any additional Vendor costs for training required pursuant to this section.
- 33.10. Purchaser shall have the right, so long as the System purchased hereunder is in use by Purchaser, to give instruction to Purchaser's personnel in all courses described above and all revisions thereto without charge, using materials supplied by Vendor. Such use by Purchaser of Vendor's materials shall include the right to make derivative works and to reproduce the materials or derivative work solely for the permitted use, which creation, use, and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Vendor. The above rights shall be at no additional charge.

### **34. Protection of Purchaser's Confidential Information**

- 34.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Vendor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 34.2. Immediately upon expiration or termination of this Contract, Vendor shall, at Purchaser's option: (i) certify to Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 34.3. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 34.4. Violation of this section by Vendor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## **Software License**

### **35. License Grant**

- 35.1. Vendor grants to Purchaser a non-exclusive, fully-paid-up, perpetual site-wide, irrevocable license to use the Software and related documentation according to the terms and conditions of this Contract.
- 35.2. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Vendor or Software owner.
- 35.3. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall

be limited to times when Purchaser's facilities, or any portion thereof, are inoperable due to emergency situations.

35.4. Business or Support Termination Rights. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the Contract Prices.

35.5. Freedom of Use. Vendor understands that Purchaser may provide information processing services to other users that are agencies of state government and other tax supported entities. Vendor further understands that Purchaser or other users that are agencies of state government and other tax-supported entities may provide services to the public through Internet applications. Software delivered hereunder may be used in the delivery of these services. Vendor acknowledges and agrees that such use of Software products is acceptable under the licensing agreements contained herein.

### **36. Software Ownership**

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Vendor hereby warrants and represents to Purchaser that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide. Vendor represents and warrants that Vendor has the right to license the Software to Purchaser as provided in this Contract; and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Vendor represents and warrants that: (i) Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

### **37. Software Specifications**

All Software will conform to its Specifications. Vendor warrants that Products delivered hereunder shall perform in accordance with these Specifications.

### **38. Compliance with Standards**

Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Vendor to conform to applicable industry standards.

### **39. Date Warranty**

Vendor warrants that all Products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and



(iv) will be interoperable with other software used by Purchaser that may deliver date records from the Products, or interact with date records of the Products ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

#### **40. Physical Media Warranty**

- 40.1. Vendor warrants to Purchaser that each licensed copy of the Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by Purchaser.
- 40.2. Vendor shall replace, at Vendor's expense including shipping and handling costs, any Software copy provided by Vendor that does not comply with this warranty.

#### **41. No Surreptitious Code Warranty**

- 41.1. Vendor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Vendor further warrants Vendor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Vendor of any fact or event, or any key, node, lock, time-out or other function, implemented by any type of means or under any circumstances, which may restrict Purchaser's use of or access to any program, data or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 41.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
- 41.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 41.4. Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.



## **42. Software Upgrades and Enhancements**

Vendor shall, as part of maintenance purchased pursuant to this contract:

- 42.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 42.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Products supplied to Purchaser; and
- 42.3. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.

## **43. Software Maintenance and Support Services**

Vendor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications and that Purchaser shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to Purchaser.

## **Contract Administration**

### **44. Legal Notices**

- 44.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, via facsimile, to the parties at the addresses and fax numbers provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

#### **To Vendor at:**

Best Tel, LLC

Attn: David Lepsig

1018 Industry Dr.  
Tukwila, WA 98188

#### **To Purchaser at:**

State of Washington  
Department of Information Services  
Attn: TSD Contract Administrator

#### **Mailing Address:**

PO Box 42445  
Olympia, WA 98504

#### **Street Address:**

2411 Chandler Court SW  
Olympia, WA 98502

Phone: 206-838-7087  
Fax: 206-838-7060  
E-mail: davel@callbesttel.com

Phone: 360-725-4200  
Fax: 360-664-0711  
E-mail: [mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov)

- 44.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 44.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**45. Vendor Account Manager**

Vendor shall appoint an Account Manager for Purchaser's account under this Contract who will provide oversight of Vendor activities conducted hereunder. Vendor's Account Manager will be the principal point of contact for DIS concerning Vendor's performance under this Contract. Vendor shall notify the DIS Contract Administrator, in writing, when there is a new Vendor Account Manager assigned to this Contract. The Vendor Account Manager information is:

Vendor Account Manager: David Lepsig  
Address: 1018 Industry Dr., Tukwila, WA 98188  
Phone: 206-838-7087      Fax: 206-838-7060      E-mail: davel@callbesttel.com

**46. Vendor Project Manager**

Vendor shall assign a Vendor Project Manager for each Purchaser installation project, except where the project is small enough so that the Vendor Account Manager may substitute for a Project Manager. Purchaser shall have approval rights over the Vendor Project Manager, or any replacements thereof. The Vendor Project Manager shall be the principal point of contact for Purchaser and shall coordinate Vendor's activities. The Vendor Project Manager shall produce and maintain a complete plan for all Vendor-related activities concerning installation and training.

**47. Section Headings, Incorporated Documents and Order of Precedence**

- 47.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 47.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) Schedules A, B and C;
  - b) DIS' RFQ (Exhibit A);
  - c) Vendor's Response to DIS' RFQ (Exhibit B);
  - d) The terms and conditions contained on Purchaser's Order Documents, if used; and

- e) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.
- 47.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract;
  - c) Schedules A, B and C;
  - d) DIS' RFQ (Exhibit A);
  - e) Vendor's Response to DIS' RFQ (Exhibit B);
  - f) The terms and conditions contained on Purchaser's Order Documents, if used; and
  - g) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

#### **48. Entire Agreement**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

#### **49. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by DIS and Vendor

#### **50. Additional Products and Services**

Vendor may submit new Products and Services with associated discounts or prices to the DIS Contract Administrator. New or changed Products and Services submitted by Vendor shall meet all mandatory requirements of the RFQ. Additional Products or Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to this Master Contract (Schedule A) by an instrument in writing, signed by both Vendor and DIS. Such writing shall include a specific description of the additional Services and/or Products, pricing, and additional terms and conditions as relevant.

#### **51. Independent Status of Vendor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any

claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, or Title 51 RCW.

## **52. Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County or the county in which Purchaser is located within the state of Washington.

## **53. Subcontractors**

Vendor may, with prior written permission from DIS Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Software Ownership, Publicity and Review of Vendor's Records** sections of this Contract shall apply to all Subcontractors.

## **54. Assignment**

- 54.1. With the prior written consent of DIS Contracting Officer, which consent shall not be unreasonably withheld, Vendor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.
- 54.2. DIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

## **55. Publicity**

- 55.1. The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by DIS or Purchaser and shall not be so construed by Vendor in any advertising or other publicity materials.
- 55.2. Vendor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein DIS' or

Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name with Vendor's Products or Services may, in DIS' or Purchaser's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or Purchaser *prior* to such use.

## **56. Review of Vendor's Records**

- 56.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 56.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Vendor shall provide access to these items within Thurston County or the county where Purchaser is located. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 56.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 56.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

## **General Provisions**

### **57. Patent and Copyright Indemnification**

- 57.1. Vendor, at its expense, shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims against DIS or Purchaser that any Product supplied hereunder, or Purchaser's use of the Product within the terms of this Contract, infringes any patent, copyright, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DIS or Purchaser provided that DIS or Purchaser:

- a) Promptly notifies Vendor in writing of the claim, but DIS' or Purchaser's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
  - b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 57.2. If such claim has occurred, or in Vendor's opinion is likely to occur, DIS and Purchaser agree to permit Vendor, at its option and expense, either to procure the right to continue using the Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product is enjoined by a court and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide Purchaser a refund. In the case of Product, Vendor shall refund to Purchaser its depreciated value. No termination charges will be payable on such returned Product, and the Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of seven (7) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser shall be refunded by Vendor.
- 57.3. Vendor has no liability for any claim of infringement arising solely from:
- a) Vendor's compliance with any designs, specifications or instructions of Purchaser;
  - b) Modification of the Product by Purchaser or a third party without the prior knowledge and approval of Vendor;
  - c) Use of the Product in a way not specified by Vendor; or,
  - d) Use of the Product with equipment not supplied by Vendor;
- unless the claim arose against Vendor's Product independently of any of these specified actions.

## **58. Save Harmless**

Vendor shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save DIS and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent DIS or Purchaser negligence.

## **59. Insurance**

- 59.1. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such

to DIS within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Contract's termination.

59.2. The minimum acceptable limits shall be as indicated below, with no for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

59.3. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name DIS as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference this Contract number T03-MST-008 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

59.4. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

59.5. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

59.6. Vendor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS sole option, result in this Contract's termination.

59.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to DIS in this Contract.

## **60. Industrial Insurance Coverage**

Prior to performing work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other

claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

**61. Licensing Standards**

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

**62. OSHA/WISHA**

Vendor represents and warrants that its Products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor agrees to indemnify and hold DIS and Purchaser harmless from all damages assessed against DIS or Purchaser as a result of the failure of the Products furnished under this Contract to so comply.

**63. Uniform Commercial Code (UCC) Applicability**

- 63.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 63.2. To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 63.3. In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

**64. Antitrust Violations**

Vendor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

**65. Compliance with Civil Rights Laws**

During the performance of this Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with the State.



**66. Severability**

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

**67. Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**68. Treatment of Assets**

- 68.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 68.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 68.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 68.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 68.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 68.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

**69. Vendor's Proprietary Information**

Vendor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information, must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, DIS or Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

## **Disputes and Remedies**

### **70. Disputes**

- 70.1. In the event a bona fide dispute concerning a question of fact arises between Vendor and Purchaser and it cannot be resolved between the parties or by the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 70.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 70.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 70.4. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 70.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

### **71. Attorneys' Fees and Costs**

- 71.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 71.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator

or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

**72. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

**73. Failure to Perform**

If Vendor fails to perform any substantial obligation under this Contract, DIS or Purchaser shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then DIS or Purchaser may withhold all monies due and payable to Vendor, without penalty to DIS or Purchaser, until such Failure to Perform is cured or otherwise resolved.

**74. Limitation of Liability**

- 74.1. The parties agree that Vendor, DIS and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **OSHA/WISHA, Termination for Default, and Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 74.2. Vendor, DIS and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS or Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, DIS, Purchaser, or their respective Subcontractors.
- 74.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 74.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

## Contract Termination

### 75. Termination for Default

- 75.1. If Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Vendor written notice of such failure or violation, and the failure or violation shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Vendor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Vendor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Vendor, or Purchaser's or DIS' Order may be terminated by written notice to Vendor.
- 75.2. In the event of termination of an Order by Purchaser or this Master Contract by DIS, Purchaser or DIS shall have the right to procure the Products and Services that are the subject of this Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Products and Services and the replacement costs of such Products and Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DIS resulting from Vendor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe DIS or Purchasers for Vendor's default.
- 75.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Vendor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Vendor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Vendor to DIS.
- 75.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 75.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

### 76. Termination for Convenience

- 76.1. When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor.
- 76.2. Purchaser may terminate its Order upon sixty (60) days notice to Vendor. If an Order is so terminated, Purchasers are liable only for payments required by the terms of any Order for Products and Services received and accepted by Purchaser prior to the effective date of termination.

**77. Termination for Withdrawal of Authority**

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any Order and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its Order(s), by seven (7) Business Days written notice to Vendor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Products or Services from a third party.

**78. Termination for Non-Allocation of Funds**

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or Order in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its Order(s) by seven (7) Business Days written notice to Vendor or otherwise work with Vendor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers will not be obligated to pay any further charges for Products or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DIS or Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Products or Services from a third party.

**79. Termination for Conflict of Interest**

DIS may terminate this Master Contract, or Purchaser its Order(s), by written notice to Vendor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any Order is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Master Contract or any Order.

**80. Termination Procedure**

- 80.1. Upon termination of this Master Contract or any Order, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable Order, may require Vendor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Order as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.
- 80.2. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Products and Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Master Contract or Order had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 80.3. Vendor shall pay amounts due Purchaser or DIS as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment,

Purchaser or DIS may charge interest on the amounts due at one percent (1%) per month until paid in full.

## **81. Covenant Against Contingent Fees**

- 81.1. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Vendor.
- 81.2. In the event Vendor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

## **Activity Reporting and Administration Fee**

### **82. DIS Master Contract Administration Fee and Collection**

- 82.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Vendor and remitted to DIS.
- 82.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 82.3. The Master Contract Administration Fee shall be invoiced by Vendor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 82.4. Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

### **83. Activity Reporting**

- 83.1. Vendor shall submit to the DIS Contract Administrator a monthly Activity Report of all Services purchased under this Master Contract. The report shall identify:
  - a) This Master Contract number;
  - b) Each Purchaser making purchases during that month;
  - c) The total purchase price (excluding sales tax) for each Purchaser; and
  - d) The sum of all purchase prices (excluding sales tax) for all Purchasers; and
  - e) The amount of the DIS Master Contract Administration Fee.
- 83.2. The Activity Report and the DIS Master Contract Administration Fee shall be submitted by the 15<sup>th</sup> calendar day of the month following the month in which Vendor invoiced Purchaser. Vendor shall submit this report according to the layout specified by the DIS Contract Administrator.
- 83.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.
- 83.4. Monthly Activity Reports are required even if no activity occurred.

83.5. Upon request by DIS, Vendor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

**84. Failure to Remit Reports/Fees**

84.1. Failure of Vendor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Vendor, which may result in DIS terminating this Master Contract with Vendor.

84.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Vendor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.

84.3. The DIS Contract Administrator will notify Vendor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Vendor to a forfeiting Purchaser may be considered failure to perform by Vendor.

84.4. If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

**Contract Execution**

**85. Authority to Bind**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

## 86. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

### Approved

State of Washington  
Department of Information Services

Signature

Michael B. Emans

Print or Type Name

Date

Assistant Director

Title

9/02/03

### Approved

Best Tel, LLC

Signature

David R. Lepsig

Print or Type Name

August 27, 2003

Date

Title

BRANCH MANAGER

### Approved as to Form

State of Washington  
Office of the Attorney General

Approved as to Form by  
Attached Email

Signature

Chip Holcomb

Print or Type Name

Senior Counsel, AGO

Title

Date

### Vendor Information

Vendor's UBI Number: 602-167-541

Minority or Woman Owned Business Enterprise

Yes

(Certification Number)

No ☒



## Moore, Jeffrey (DIS)

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**From:** Holcomb, Chip (ATG)  
**Sent:** Thursday, August 14, 2003 10:56 AM  
**To:** Moore, Jeffrey (DIS)  
**Subject:** RE: BestTel Contract

Consider it approved.  
Let me know if you need more,  
Chip Holcomb-Senior Counsel, Attorney General's Office  
voice: (360)753-9671  
fax: (360) 586-3593  
email: chiph@atg.wa.gov

-----Original Message-----

**From:** Moore, Jeffrey (DIS)  
**Sent:** Wednesday, August 06, 2003 11:14 AM  
**To:** Holcomb, Chip (ATG)  
**Subject:** BestTel Contract

Chip,

Attached is a copy of the BestTel Agreement, Marie asked me to have you approve it as to form.

Thanks,  
**Jeffrey C. Moore**  
TSD Contracts & Acquisitions Office  
Contracts Specialist Attorney

Washington State Department of Information Services  
2411 Chandler Court SW, Olympia, WA 98502  
voice: 360.725.4242  
fax: 360.664.0711

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<< File: T03MST008 BestTel NECI 8-05-03.doc >>

# **Schedule A**

## ***Authorized Product and Price List***

**Master Contract No. T03-MST-008**

**With**

**Best Tel, LLC.**

**\*\*Please review Price link for current information.**

**Schedule B**  
***Escalation Procedures***

for  
**Contract Number T03-MST-008**  
with  
**Best Tel, LLC**

In the event that an Order has not been completed to the customer's expectation or an issue needs to be escalated to the management level. Best Tel has established the following escalation procedure for the purpose of providing a higher standard of customer service.

**1st Contact:**

**David Lepsig – Branch Manager**  
**Best Tel, Seattle**  
**Office: (206) 838-7087**  
**Email: davel@callbestteldata.com**

**2<sup>nd</sup> Contact:**

**Dennis Poulin – general Manager**  
**Best Tel, All offices**  
**Office: (541) 842-1000**  
**Cell Phone: (541) 210-1115**  
**Home: (541) 779-6018**  
**Email: dennisp@callbesttel.com**

**3rd Contact:**

**Chuck Whiteley – Branch Manager**  
**Best Tel, Medford**  
**Office: (541) 842-1000**  
**Cell Phone: 541) 210-1117**  
**Home: (541) 779-9954**  
**Email: chuckw@callbesttel.com**

**Schedule C**  
***Maintenance Plan***

for  
**Contract Number T03-MST-008**  
with  
**Best Tel, LLC**



1150 Knutson Ave, Ste 10  
Medford, Oregon 97504  
(541)776-0807  
(800)886-7810  
Fax:(541)779-4066

1142 Willagillepsie Rd., Ste 1  
Eugene, Oregon 97401  
(541) 688-5575  
(866) 688-5575  
Fax:(541)683-5515

**MAINTENANCE AGREEMENT**

This maintenance agreement is made between Best Tel, LLC (hereinafter referred to as Best Tel) and:

\_\_\_\_\_  
Name of firm (hereinafter referred to as Customer)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

1. **AGREEMENT:** Subject to the terms and conditions set forth herein, Best Tel agrees to maintain the equipment itemized below:

Quantity	Part Number	Description
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. **TERM:** This agreement will be one year commencing from the date of installation.

3. **WARRANTY:** Labor will be provided twenty-four hours per day, seven days per week (including holidays) during the first year after installation. The parts itemized above will be covered under warranty as outlined in the purchase agreement and Master Contract T03-MST-008 for a period of 5 years from the date of installation.

4. RENEWAL:

The first year after date of installation:

Parts (as itemized above) and Labor. .... Covered by Warranty  
....

The second through fifth year after date of installation:

Parts (as itemized above)..... Covered by Warranty  
....  
Labor..... Per Month  
... \$2.75 Per Port

Each year thereafter:

Parts (as itemized above) and Labor. .... Per Month  
... \$2.75 Per Port

This agreement will be automatically renewed from month to month thereafter unless cancelled in writing by the customer with thirty (30) days prior notice.

**CUSTOMER ACKNOWLEDGES THAT THE ADDITIONAL TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE A PART OF THIS AGREEMENT.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

CUSTOMER

Best Tel, LLC (Officer)

By:

Title:

Reverse Side:

5. MAINTENANCE SERVICES: Best Tel will provide parts and labor necessary to keep the equipment in good operating condition during the term of this Agreement. This Agreement covers repairs resulting from normal and usual operation of the equipment. It does not cover damages resulting from causes such as, but not limited to, the following: fire or other casualty, faulty, willful, or negligent operation or handling of the equipment by the Customer or others, or damage or destruction resulting from factors external to the equipment. With respect to repairs not resulting from the normal and usual operation of the equipment, Customer will pay for service and parts at Best Tel's Master Contract W03-MST-008 rates. Best Tel will make its best efforts to respond to Customer's request for services as follows:

EMERGENCY SERVICE is defined as that necessitates by a major failure of the system to operate as required. Response time by Best Tel will be within two (2) hours, plus travel time, after notification by Customer.

REGULAR SERVICE requests shall be responded to within forty-eight (48) hours or two (2) business days after notification by Customer, and work will be performed during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday except recognized holidays.

6. UNAUTHORIZED WORK. Customer will not permit any person other than Best Tel to make any repairs, additions, deletions or changes to the equipment unless approved by Best Tel. If at any time during the period hereof service is performed to the equipment by anyone other than Best Tel, then at the option of Best Tel, this Agreement shall immediately become null and void.

7. LIMITATION OF LIABILITY. Best Tel shall not be liable for any loss to Customer, or any other person, arising from the use of the equipment, except for a claim related to bodily injury or death and service credits. UNDER NO CIRCUMSTANCE SHALL BEST TEL BE LIABLE FOR ANY LOSS OF BUSINESS, REVENUE OR GOODWILL, OR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND ARISING FROM ITS FAILURE TO PERFORM UNDER THIS AGREEMENT.

8. FORCES MAJEURE: Performance of any obligation hereunder by Best Tel will be excused if prevented by acts of God, or public enemy, fire or other casualty, labor disputes, or, without limiting the foregoing, any circumstance beyond its reasonable control.

9. MISCELLANEOUS: Customer agrees to report immediately any conditions requiring service or correction and to grant free access to the location of the equipment. If any provisions of this Agreement are held to be illegal, invalid, or unenforceable, such shall not invalidate the remaining provisions of this Agreement.

10. ENTIRE AGREEMENT: THIS INSTRUMENT, ALONG WITH MASTER CONTRACT T03-MST-008 CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND BEST TEL DISCLAIMS THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. FOLLOWING THE EXPIRATION OF ANY EXPRESS WARRANTY PERTAINING TO EQUIPMENT, BEST TEL DISCALIMS THE IMPLIED WARRANTY OF MERCHANTABILITY.

Amendment Number 04-01  
to Master Contract Number T03-MST-008  
Small Business Phone Systems

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In accordance with Provision 49 (*Authority for Modifications and Amendments*) of Master Contract Number T03-MST-008, this Amendment 04-01 is entered into by and between the State of Washington, Department of Information Services ("DIS") and Best Tel, LLC ("Contractor").

The purpose of this amendment is to revise the Insurance Requirements for this Master Contract.

Subsection 59.2 of Provision 59 (*Insurance*) of the Master Contract is hereby deleted in its entirety and replaced with the following:

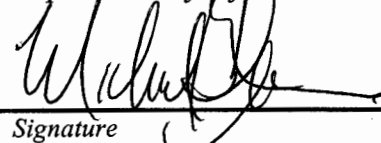
59.2 The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
- c) Employers Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
- d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;

All other provisions of Master Contract T03-MST-008, shall remain in full force and effect.

This Amendment 04-01 shall be effective as of the date signed by DIS.

Approved  
State of Washington,  
Department of Information Services



Signature

Michael B. Emans

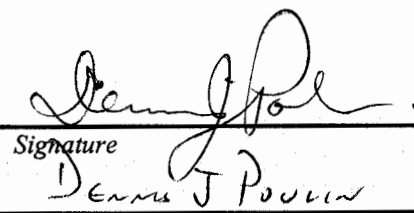
Print or Type Name

Assistant Director

Title

2/9/04  
Date

Approved  
Best Tel, LLC



Signature

Print or Type Name

General Manager

Title

1/29/04  
Date

**AMENDMENT NUMBER 05-02**

**to**

**Master Contract Number T03-MST-008**

**for**

**Small Business Phone Systems**

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In accordance with Provision 49 (*Authority for Modifications and Amendments*) of Master Contract Number T03-MST-008 (the "Contract"), this amendment 05-02 ("Amendment") is entered into by and between the State of Washington, Department of Information Services (hereinafter "DIS") and Best Tel, LLC. (hereinafter "Contractor").

The purpose of this Amendment is to modify Provision 83 *Activity Reporting*.

Contractor and DIS agree that Provisions 83.1 through 83.5 are hereby deleted and replaced as follows:

- 83.1. Vendor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Services purchased under this Master Contract. The report shall identify:
- a) This Master Contract number;
  - b) Each Purchaser making purchases during that quarter;
  - c) The total purchase price (excluding sales tax) for each Purchaser; and,
  - d) The sum of all purchase prices (excluding sales tax) for all Purchasers; and
  - e) The amount of the DIS Master Contract Administration Fee.
- 83.2. The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:
- | <b><u>For activity in the months:</u></b> | <b><u>Report &amp; Fee Due:</u></b> |
|---|-------------------------------------|
| January, February, March                  | April 15 <sup>th</sup>              |
| April, May, June                          | July 15 <sup>th</sup>               |
| July, August, September                   | October 15 <sup>th</sup>            |
| October, November, December               | January 15 <sup>th</sup>            |
- 83.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Vendor.

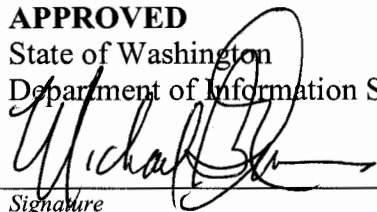


- 83.4. Quarterly Activity Reports are required even if no activity occurred.
- 83.5. Upon request by DIS, Vendor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

All other provisions, terms and conditions of the Master Contract, as previously amended, shall remain in full force and effect.

**APPROVED**

State of Washington  
Department of Information Services

  
Signature

Michael B. Emans

Print or Type Name

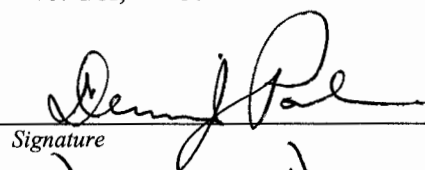
Assistant Director

Title

  
Date

**APPROVED**

Best Tel, LLC.

  
Signature

Dennis J. Pourn

Print or Type Name

General Manager

Title

  
Date

**AMENDMENT NUMBER 07-03**  
**to**  
**MASTER CONTRACT NUMBER T03-MST-008**  
**for**  
**NEC SMALL BUSINESS PHONE SYSTEMS**

In accordance with Provision 49 (*Authority for Modifications and Amendments*) of Master Contract number T03-MST-008, this Amendment 07-03 is entered into by and between the State of Washington, Department of Information Services ("DIS") and Best Tel, LLC, ("Contractor").

The purpose of Amendment number 07-03 is to extend the term of this Master Contract specifically from September 1, 2006 through January 31, 2007.

All other provisions of Master Contract number T03-MST-008, as previously amended, remain in full force and effect.


This Amendment number 07-03 shall be effective as of the date signed by DIS.

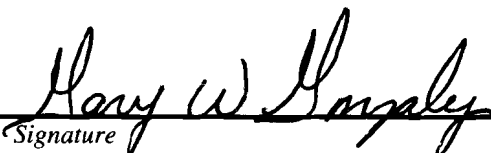
Approved

Approved

State of Washington,  
Department of Information Services

Best Tel, LLC

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

Roland Rivera  
\_\_\_\_\_  
Print or Type Name

GARY W. GONZALEZ  
\_\_\_\_\_  
Print or Type Name

Assistant Director  
\_\_\_\_\_  
Title

28 Jul 06  
\_\_\_\_\_  
Date

PRESIDENT  
\_\_\_\_\_  
Title

7/14/06  
\_\_\_\_\_  
Date